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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,539

01/27/2004

Liam Scanlan

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1652

26379 7590 09/12/2008  
DLA PIPER US LLP  
2000 UNIVERSITY AVENUE  
E. PALO ALTO, CA 94303-2248

EXAMINER

MIZRAHI, DIANE D

ART UNIT

PAPER NUMBER

2165

MAIL DATE

DELIVERY MODE

09/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/765,539	<b>Applicant(s)</b> SCANLAN ET AL.	
	<b>Examiner</b> DIANE MIZRAHI	<b>Art Unit</b> 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

Claim 4 is pending and are presented for examination. Claims 1-3 have been canceled. This office action is in response to the amendment filed May 22, 2008.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed Cir 1993). *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969);

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 4 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 and 15 of U.S. Patent No. 6,708,188 B1 issued March 16, 2004. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both exhibiting similar method record data backup activity from one or more backup products having different formats in a common format.

Current Application	US Patent 6708188
Claim 4 :	Claims 4 and 15:
Claim 4	Claim 4

<p>A method of representing records of data backup activity from one or more data backup products having different formats in a common format, the method comprising: obtaining records of data backup activity from the one or more data backup products; and generating a canonical backup log containing backup job records corresponding to the records from the one or more data backup products, the canonical backup log including one or more of a date and time that a data backup operation took place, a proprietary name of the data backup client, a fully qualified host name of the data backup client, a number of bytes that were backed up, a number of files or objects that were backed up, a proprietary data backup level name or a default value, a canonical data backup level name or a default value, a description of where the</p>	<p>A method of representing records of data backup activity from one or more data backup products having different formats in a common format, the method comprising: obtaining records of data backup activity from the one or more data backup products; and generating a canonical backup log containing backup job records corresponding to the records from the one or more data backup products, the canonical backup log including one or more of a date and time that a data backup operation took place, a proprietary name of the data backup client, a fully qualified host name of the data backup client, a number of bytes that were backed up, a number of files or objects that were backed up, a proprietary data backup level name or a default value, a canonical data backup level name or a default value, a description of where the</p>
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<p>information in the data backup job record was obtained, a number of seconds that elapsed during the data backup operation or a default value, a number of errors or a default value, a data and time the data backup will expire or default value, a logical target name, and a media label of the storage media to which the data backup was written, and a backup job field indicating the number of backup job records in the canonical backup log.</p>	<p>information in the data backup job record was obtained, a number of seconds that elapsed during the data backup operation or a default value, a number of errors or a default value, a data and time the data backup will expire or default value, a logical target name, and a media label of the storage media to which the data backup was written.</p>
	<p>Claim 15</p> <p>A device, being executed by a host computer, for obtaining records of data backup activity from one or more data backup products in a common format, the data backup products each having clients and servers connected to a computer network, the device comprising: a specific backup engine corresponding to each data backup product that receives the records of data backup activity from each specific</p>

data backup product; and means for generating a canonical backup activity log based on the records from the data backup products, the canonical backup activity log including one or more of a date and time that a data backup attempt or operation took place, a proprietary name of the data backup client, a fully qualified host name of the data backup client, a number of bytes that were backed up, a number of files or objects that were backed up, a proprietary data backup level name, a canonical data backup level name, a description of where the information in the data backup job record was obtained, a number of seconds that elapsed during the data backup operation, a number of errors, a date and time the data backup will expire, a logical target name, and a media label of the storage media to which the data backup was written

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In addition, although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of each claim in the present application is essentially identical to the scope of a corresponding claims in the Patent No. 6,708,188 B1, as indicated in the above claim diagram (see above for details).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



**Communication**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane D. Mizrahi whose telephone number is 571-272-4079. The examiner can normally be reached on Monday-Thursday (9:30 - 4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian Chase can be reached on (571) 272-4190. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 305-3900 for After Final communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

/Diane Mizrahi/

*Diane.Mizrahi@USPTO.gov*  
Primary Patent Examiner  
Technology Center 2100

August 22, 2008